



COMPETITIVE PROCUREMENT FOR:

**City of Fredericksburg
Fiber Locating, Emergency Restoration and
Maintenance Services**

REFERENCE:

Request for Proposals (RFP) No. ISFY2014-010
Solicitation Requirements

SOLICITING/CONTRACTING ENTITY:

CITY OF FREDERICKSBURG
acting through the
Information Technology Department,
Ms. Suzanne Goodman, CIO

SOLE CONTACT POINT FOR INQUIRIES:

Ms. Suzanne Goodman, CIO
Information Technology Department
Phone: (540) 372-1026 ext. 200
Email: slgoodman@fredericksburgva.gov

SOLE CONTACT POINT FOR SUBMISSIONS:

City Manager's Office
P.O. Box 7447, 715 Princess Anne Street
Fredericksburg, VA 22404-7447

KEY EVENTS:

Event:

Date:

RFP Release Date	06/02/2014
Deadline for Submission of PROPOSERS' Questions	06/09/2014 Noon EST
Issuance of Official Response to PROPOSERS' Questions	06/13/2014
Proposals Due Date	06/20/2014 4:00 pm EST
Anticipated Notification of Award	06/25/2014
Anticipated Timeframe for Contract Execution	06/27/2014

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NAME OF SOLICITING PUBLIC BODY

City of Fredericksburg
P.O. Box 7447, 715 Princess Anne Street
Fredericksburg, VA 22404

1. Purpose

The purpose of this RFP is to solicit proposals from qualified firms and to set forth the terms and conditions whereby the City of Fredericksburg may contract with the successful Proposer to provide routine and emergency Virginia Utility Protection Services (Miss Utility) marking services, restoration and repairs, and maintenance to damaged City owned fiber and conduits.

2. Introduction

This procurement will be conducted in accordance with the competitive negotiation procedures of the City Procurement Policy.

Definitions:

- **Proposer** means any person or entity that submits a proposal in response to this RFP.
- **Contractor** means a Proposer whose proposal is accepted by the City.
- **City** means the City of Fredericksburg, Virginia, a municipal corporation.

The City is seeking a qualified Proposer to provide fiber locating, emergency restoration, and maintenance services necessary to maintain approximately 25 miles of fiber optic cable and conduit infrastructure. The majority of the 25 mile network is buried and was either installed via horizontal boring or vibratory plowing. Overhead cable exists in areas of the City and is indicated on the city fiber maps (available upon request).

To request a copy of the City owned fiber maps, please contact:

City of Fredericksburg, Information Technology Department

Phone: (540) 372-1026

Email: infosys@fredericksburgva.gov

The City has a single mode fiber infrastructure servicing most City office buildings and the City schools. Future expansion may include the Fredericksburg Industrial Park and the Dixon Park area on Dixon St (Rt 2). Fiber maps will be provided upon request (see above).

The City is seeking a contractor to provide these services:

- Fiber locating: provide 'Miss Utility' utility location services.

- Restoration services: respond to fiber optic cable and conduit infrastructure damage 24 hours a day, 365 days a year to restore damaged fiber optic infrastructure in a timely manner.
- Maintenance services: install additional, and improve and maintain existing, fiber optic infrastructure and documentation on an as-needed basis.

This RFP is not intended to limit a potential firm's creativity in suggesting ideas to accomplish the City's goals. Innovative ideas, new concepts and partnership arrangements will be considered and welcomed. Please indicate any other value-added arrangements, unique features, special services, discounts or terms that might suggest solutions for the needs of the City.

3. Proposer Eligibility Requirements

A. Qualifications and Experience

Extensive knowledge of Fiber Locating, Emergency Restoration and Maintenance Services, and an established track record of fiber location, emergency restoration, and maintenance services for local governments.

B. Prime Contractor

A Proposer must assume responsibility as Prime Contractor for this engagement. Consortiums, joint ventures, or teams submitting proposals, although permitted and encouraged, must establish that all contractual responsibility rests solely with one prime contractor or one legal entity, which shall not be a subsidiary or affiliate with limited resources.

Subcontracting is only permitted with the City's advance written permission. Identify all proposed subcontractors in your proposal.

C. Authorized to Conduct Business in Virginia

Proposers must be authorized to do business in Virginia, and registered with the Virginia State Corporation Commission.

D. Non-Discrimination

The City does not discriminate against Proposers based on race, religion, color, sex, national origin, age, disability, or faith-based organization status.

4. Scope of Services

The City is seeking a contractor to provide these services

A. Locating

Register with Virginia Utility Protection Services (VUPS), of which the City is a

member. Follow all VUPS guidelines. www.va811.com

Respond to all calls relating to VUPS inquiries, emergency dig tickets, or any other VUPS tickets (including remarking)

Mark lines (including remarking) as tickets are received. Work and close tickets within VUPS allowed time.

Maintain marks according to VUPS regulations.

Pay any costs associated with mismarking, including repair to utilities (City and others), damages due to lost service, materials, labor, road repair, etc.

Document all incidents by taking photos with a measuring device on the ground showing the distance from the mark. This documentation is required for both mismarked and "correctly marked" lines. The City will seek damages from any utility that does not follow VUPS regulations and will need this documentation.

B. Fiber Restoration

Provide fiber restoration and maintenance services necessary to maintain approximately 25 miles of fiber optic cable and conduit infrastructure.

Have adequate equipment and sufficient, competent, and dependable personnel capable of performing various types of fiber optic repair needed in the field, including mid-span fusion splicing, trunk splicing, OTDR testing, fiber enclosure installations, termination of fiber inside fiber trays and full fiber sections replacement.

Perform all clearing, installation of ducts, handholes, grounding, placement of backfill and compaction, restoration of right of ways, fiber optic cable pulling, splicing, termination, testing and all other specifications.

Have the capability to install both open trench and directional bored conduit for new installation and replacement of damaged conduit. Have the capability to perform aerial work as needed for installation, maintenance and repair.

Properly backfill all excavations. Fully restore all streets and highways, including sidewalks and public or private driveways, to the satisfaction of the City. Final restoration must restore the area back to normal state. Area must be cleaned, smoothed, seeded, and straw in place. All VDOT procedures must be followed.

Service to a fiber optic cable infrastructure includes any item of a complete fiber cable run between and to termination patch panels, including termination patch panels, terminations at patch panels, fiber optic cable, fiber cable splices, pole/building attachments, fiber cable related guy/suspension wires/anchors, loop and splice enclosures/boxes, etc.

For services affecting emergency restoration, be available to perform services 24 hours a day, every day of the year.

On occasion, Proposer may be required to work in close proximity to the rail right-of-way. Proposer will be required to follow all rail right-of-way procedures. Any future permits or fees required by the Railroad will be the responsibility of the Proposer.

Provide the City with a list of telephone numbers that will be answered at all times by the Proposer's personnel. Alternatively, an answering service that can contact the Proposer immediately may be used.

For emergency restorations that do not affect service (e.g. if non-used fiber strands are damaged and need to be repaired), complete all services as scheduled by the City.

Test all repaired fiber optic cable and submit test results to the City.

Coordinate utility locates before commencing any work.

Repairing any damage or breaks in fiber, at your expense, if the fiber break is caused by mismarking or failure to complete the locate ticket on time.

All repairs must be complete within a minimum of a four (4) hour response time to arrive on site and begin repair on break.

Perform temporary restoration when damage is so severe that four (4) hour restoration cannot be completed. Have temporary splice cable in place to restore critical services within 4 hrs after damage is assessed, then start final restoration/repair and complete within 5 days.

Notify the City of any breaks, events, or incidents immediately.

Keep documentation of every restoration and send to the designated City point-of-contact at each step:

- Time the call was received
- Pictures of event immediately as they arrive on site (regardless of fault)
- Damage assessment (writing and pictures)
- Repair (how was repaired (writing) and pictures showing temporary and final restoration.

C. Maintenance

Install additional, and improve and maintain existing, fiber optic infrastructure and documentation on an as-needed basis.

Inspect the entire network each year. Inspection includes bi-directional OTDR testing of all unused strands, checking condition hand holes, and aerial fiber

condition.

Provide troubleshooting and analysis on fiber circuits as requested by the City. This troubleshooting will include bi-directional OTDR testing and power meter testing. Analysis including instrument output charts will be provided. After completing and communicating any issues, request approval to correct issues. During outages, fiber testing and troubleshooting may require emergency response.

D. Maintenance of Traffic

MOT includes the planning, furnishing, installing, maintaining, and removing of traffic control and safety devices. MOT is incidental for all maintenance tasks, except when the work is within 15 feet of the edge of travel or when a lane closure is needed.

Any work where your personnel are in a travel lane requires appropriate lane closures. Submit a request for a lane closure to the City for approval of the proposed lane closure. The City will give you a list of all contacts that you must notify of the lane closure.

Traffic control must meet Virginia Department of Transportation (VDOT) requirements and traffic control procedures <http://www.virginiadot.org>. Traffic control is your responsibility.

E. Proposer Reviews

The City may periodically review project control and management procedures to ensure that project performance conforms to City procedures, plans, specifications, and Contract provisions. Assist the City designated representative in these reviews.

When deficiencies are identified in a review, immediately implement remedial action to eliminate any deficiencies. Remedial actions may include further training of the personnel (in scope and/or frequency), subdivision of staff responsibilities, addition of staff, or replacement of personnel whose performance is considered inadequate.

F. Building Access

Provide access into buildings by transitioning from HDPE pipe to exterior conduit, penetrating exterior, routing cable to demarcation point, and grounding. The work must follow all local, state, and federal codes. Submit the work for City approval.

5. Instructions to Proposers

All Proposals must be received by 4:00 P.M. on 6/20/2014. Any Proposal received after this time and date will not be considered. It is the Proposer's responsibility to have the proposal to City on time and at the correct address. Federal Express and other overnight delivery services may not guarantee morning delivery to Fredericksburg, VA. Next day delivery usually arrives in mid-to-late afternoon.

1. Submit 3 printed copies, (1 marked "ORIGINAL" and 2 copies) and 1 electronic version in Adobe PDF on CD. The CD must be sealed in the same envelope with the original signature copy of the proposal.
2. The original proposal must be signed by an official authorized to legally bind the Proposer to its provisions. The signature must appear above the typed or printed name and title of the individual signing, clearly indicate the legal name, address, email address and telephone number of the Proposer (company, firm, partnership, or individual), and contain a statement that the proposal is valid for at least 180 days from the proposal date.
3. Submit proposals on standard 8-1/2 x 11-inch paper and stapled or placed in a binder. All proposals must be submitted with double sided printing, unless specifically shown to be impracticable. Each page must be clearly and consecutively numbered on each page.
4. The proposal must be in a sealed envelope clearly marked in the lower left corner: "Sealed Proposal, RFP# ISFY2014-010 City of Fredericksburg Fiber Locating, Emergency Restoration and Maintenance Services." Proposals not so marked or sealed will be returned to the Proposer and will not be considered. Proposals must clearly indicate the legal name, address, telephone number, and email address of the Proposer (company, firm, partnership, or individual). Proposals must be signed above the typed or printed name and title of the individual signing on behalf of the Proposer. The Proposer is responsible for all expenses incurred in making the Proposal.
5. All records pertaining to this contract are open to inspection by the public under the Virginia Freedom of Information Act unless specifically exempted under Virginia Code § 2.2-4342. If the Proposer wants portions of their proposal to be confidential, they must comply with § 2.2-4342(F), which requires that they (i) invoke the protections of § 2.2-4342(F) before or upon submission of the data, (ii) identify the data to be protected, and (iii) state the reasons why protection is necessary. If the City can not tell which **specific** parts of the proposal are marked as confidential, or if the entire proposal is

marked as confidential, the entire proposal is public information.

6. The legal terms attached to this request are the terms that will govern any contract resulting from the request. The Proposer may propose edits to these terms and propose specific additional terms, but the Proposer **may not** attach their own set of standard terms or other documents containing terms that contradict or restate the City's terms.
7. The City reserves the right to request clarification of information submitted and to request additional information.
8. Any Proposal may be withdrawn up until the time set for the opening of the Proposal.
9. Any questions must be directed to the contact person listed on this RFP's cover page. A written addendum signed by that person and posted at www.fredericksburgva.gov/Bids.aspx is the only means by which the City will issue official clarifications and information to this RFP. The Proposer is responsible for checking for addenda regularly. The Proposer may sign up for automatic notifications at:
www.fredericksburgva.gov/list.aspx?Mode=Subscribe#bids.

6. Proposal Conditions

A. Binding Offer

Proposals are binding offers. If the City accepts a proposal, the Proposer is bound to the terms of the contract.

B. Contingencies

This program is contingent on available funding. The City may award multiple contracts or no contract. The City may negotiate with proposers and ask proposers to revise aspects of their proposals as a result.

C. Incurred Costs

The City is not responsible for any costs incurred in preparing a proposal.

D. Inaccuracies or Misrepresentations

If the City determines that a proposer has made a material misstatement or misrepresentation, the City may eliminate the proposer from the RFP process.

E. Audit

By submitting a proposal in response to this RFP, Proposer grants the City, State of Virginia and the US Federal Government the right and permission to audit the prospective Contractor's financial and other records as they may relate to this procurement.

F. Price Quotes

Proposer shall supply detailed price quotes for all specified options.

G. Cooperative Procurement

Public bodies other than the City may purchase goods and services from Contractor under the terms of this contract, under Virginia Code § 2.2-4304.

H. Rights to Materials

The City owns all information submitted to it in proposals under this RFP.

7. Proposal Requirements

The Proposal shall provide information on the Proposer's expertise, experience, capabilities, and knowledge in providing fiber locating, emergency restoration and maintenance services, as described in [Scope of Services, Section 4](#)

8. Proposal Format

Response to this Request for Proposal must be in the form of a proposal package submitted in this sequence and format (each underlined section should be its own tab):

- A. Cover Page- A letter on letterhead stationary signed by an authorized officer, employee or agent of the organization submitting the proposal, containing:
 - 1. A statement that the proposal is submitted in response to the Request for Proposal for Fiber Locating, Emergency Restoration and Maintenance Services, RFP# ISFY2014-010.
 - 2. A statement indicating which individual by name, title, address, phone number and email address is authorized to propose to, negotiate with, and contract with the City on behalf of the organization.
 - 3. The signature of the person listed in #2.
- B. Table of Contents- A complete table of contents for the entire proposal with respective page numbers opposite each topic is to be included.

- C. Proposal Description- A detailed description of the proposal being made.
1. Proposal must address but is not limited to all items in Scope of Services, Section 4.
 2. Proposal must include:
 - a. A brief synopsis of the Proposer's understanding of the City's needs and how the Proposer plans to meet those needs. This must provide the City with a broad understanding of the Proposer's entire proposal.
 - b. A narrative description of the proposed plan to achieve the objectives and requirements outlined in the Scope of Services.
 - c. A detailed proposed schedule.
 - d. Explanation of any assumptions and constraints.
 - e. Identification of any additional services proposed.
- D. Statement of Experience
1. Proposer's full legal name (e.g. Fiber Company, LLC).
 2. Place(s) of incorporation
 3. Federal Tax Identification Number
 4. Number of years Proposer has been in business under its current name, prior business names, and a short corporate history of the firm.
 5. A statement that the Proposer has demonstrated capacity to perform the required services. Include an executive summary highlighting the qualifications of the Proposer.
 6. List any applicable licenses or permits presently held and indicate ability to obtain any additional licenses or permits that may be required.
 7. A statement that the Proposer has an organization that is adequately staffed and trained to perform the required services or demonstrate the capability for recruiting such staff.
 8. For every contract Proposer has entered into in the past three years (including ongoing contracts) for similar services, list (Virginia contracts first):
 - a. Date of completion and duration of the contract.
 - b. Type of service.
 - c. Total dollar amount contracted for and amount received.
 - d. Location of area served.
 - e. Name, address and contact information of agency with which contracted and agency person administering the contract.
 - f. If none, so state.
 9. If any of those contracts were terminated before the original termination

date:

- a. Date of termination and duration of each contract.
- b. Reason for termination.
- c. If none, so state.

10. All controlling interests in any other firms providing similar products or services, and financial interest in other lines of business. If none, so state.

- E. Subcontractor Information - A written description of subcontracting activities that includes the full legal name and address of the subcontractor, type of work to be performed and percentage of the total work of the proposal.
- F. Audited financial statements - The most recent and complete audited financial statements available for the previous two years, prepared by an independent, certified public accountant.
- Submit the most recent Comprehensive Annual Financial Report (CAFR).
 - Include a statement that the Proposer does not have any commitments or potential commitments which may impact on the Proposer's assets, lines of credit, guarantor letters or ability to perform the contract.
- G. Insurance - Submit evidence of ability to obtain insurance in the amounts and coverages stated in Attachment A, Paragraph P. Insurance.
- H. Cost Information - A complete cost proposal of all items identified on the Cost Proposal, Attachment B, and ***a description of any other costs the City might have to pay.***
A statement warranting that the City will incur no costs, either on a one-time or continuing basis, other than those specified in the proposal.
- I. Additional Requirements:
1. A statement outlining any exceptions to the City's requirements or clarifications to the requirements.
 2. The caption, case number, court, and general summary of any litigation pending or judgment rendered within the past 5 years against the Proposer or any of its predecessor legal entities.
 3. Describe whether the Proposer or any of its officers or managers (i) is currently under suspension, debarment, voluntary exclusion, or determination of eligibility by any federal, state, or local agency, (ii) has been suspended, debarred, voluntarily excluded or determined ineligible by any agency within the past 5 years, (iii) has a proposed debarment pending, or

(iv) has been indicted, convicted, or has a civil judgment rendered against it involving fraud or misconduct with the past 5 years.

4. List any pending litigation in which Proposer or any of its officers or managers is a named party.

9. Proposal Evaluation & Selection

1. *Initial Review:* all proposals will be initially evaluated to determine if they meet the following minimum requirements:
 - a) The proposal must be complete, in the required format, and in compliance with all the requirements of this RFP.
 - b) The proposal must meet the requirements of [Scope of Services, Section 4](#).

Failure to meet all of these requirements may result in a rejected proposal.

2. The City Source Selection Committee (FSSC) will then use the following criteria in its review and evaluation of the Proposals:

EVALUATION MATRIX		
Category	Description	Awardable Points
A	Suitability of the Proposer to provide Fiber Locating, Emergency Restoration and Maintenance Services (overall public sector experience and qualifications)	0-25
B	Proposer's understanding of project scope and goals as well as clarity, completeness and general quality of proposal	0-25
C	Experience of the Proposer in providing comparable services to other jurisdictions	0-20
D	Experience, qualifications, technical competence, and availability of proposed personnel assigned	0-20
E	Pricing of Services	0-20
F	Office location and response time	0-20
G	Proposer's references and client recommendations	0-10
H	Demonstration of financial resources	0-10
Total		150

The City may select proposers to interview prior to contract execution.

Selection will be based on determination of which proposal will best meet the needs of the City and the requirements of this RFP.

3. The City may ask additional questions of proposers, or negotiate over the proposals.
4. The City may then award contracts based on the specified criteria.

The City reserves the right to accept or reject any or all proposals, to waive irregularities and technicalities, and to request resubmission or additional information. The City is the sole judge of the proposals and the only entity qualified to determine which proposals best meet the City's needs. The City's decision is final.

Attachment A. Terms

A. Authorization to do Business in Virginia

Contractor is authorized to do business in Virginia as a domestic or foreign business entity under Title 13.1 or Title 50 of the Virginia Code. Contractor will not allow its existence to lapse or its certificate of authority or registration to do business in Virginia to be revoked or cancelled during the term of this contract.

B. Relation to City

Contractor is an independent contractor of the City. This contract does not create an employment relationship between the City and Contractor or any of its employees.

C. Modifications

This contract consists of the Request for Proposals issued by the City (including these terms), the winning Proposal, the Notice of Award issued by the City, and any written change orders approved by the City. Modifications to this contract can only be authorized by approved written change order. Contractor must submit requests for change orders to the City. The City will respond to requests promptly, in writing.

D. Payments

Contractor must provide its federal employer identification number to the City before requesting payment. Contractor will submit invoices, with appropriate documentation, to the City. The City will inspect all work performed under work requests. If the work is unsatisfactory to the City, Contractor will re-perform the work at no cost to the City. If the work is satisfactory to the City, the City will pay the invoice within 30 days of the inspection or invoice (whichever is later). Any invoice unpaid after 30 days will accrue 1% interest per month.

E. Term and Renewal

The term of this Agreement shall be for 1 year, annually renewable 4 times. This Agreement will automatically renew at the expiration of the Initial Term or Renewal Term, as the case may be, unless either party gives written notice of termination of this Agreement no later than 30 days prior to the expiration of the Initial Term or Renewal Term.

F. Non-appropriation

All funds for payments after June 30 of the current fiscal year are subject to appropriation by the City Council. If Council does not appropriate the required funds, the City will terminate this contract on June 30 of the then-current fiscal year.

G. No Endorsement

By selecting a proposal, the City has not endorsed the proposer or its products or services. Contractor will not make any reference to the City in any promotional materials without advance written permission from the City.

H. Safety

Contractor shall follow all safety requirements outlined in the National Electric Safety Code (NESC), the Occupational Safety and Health Administration (OSHA), and all other relevant professional and legal safety requirements.

I. Termination

The City may terminate this contract for any reason upon 30 days notice to Contractor. The City will promptly pay all amounts already earned by Contractor and reasonable expenses incurred in reliance upon the contract.

The parties can agree to terminate this contract at any time.

J. Assignment of Interest

Contractor will not assign or otherwise transfer any of its rights, obligations, or interests in this contract without the written permission of the City.

K. Release of Data

No reports, information or data given to or prepared by the Contractor under the resulting Contract shall be made available to any individual or organization by the Contractor without the prior written approval of the City, which the City shall be under no obligation to grant. Contractor agrees to execute [Attachment C, Nondisclosure and Confidentiality Agreement](#).

L. Choice of Law, Venue

This contract is governed by Virginia law. The Circuit Court of Fredericksburg, Virginia is the exclusive venue for any litigation regarding this contract.

M. Claims

Contractor must notify the City in writing of its intention to file a claim at the time of the occurrence or beginning of the work upon which the claim is based. All claims must be submitted less than 60 days after the final contract payment.

N. Non-Discrimination

Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. Contractor will post in conspicuous places, available to employees and applicants for employment, notices stating the terms of this section.

Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that the Contractor is an equal opportunity employer.

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation are sufficient for the purposes of this section.

Contractor will include the terms of this section in every subcontract or purchase order over \$10,000, so that the terms will be binding upon each subcontractor and vendor.

O. Immigration

Contractor does not, and will not during the performance of this contract, knowingly employ an unauthorized alien as defined in federal Immigration Reform and Control Act of 1986.

P. Insurance

Contractor and any subcontractors will maintain the following insurance coverage during the entire term of the contract. Contractor will provide copies of its Certificates of Insurance to the City.

- i. Workers' Compensation -- as required by law.
- ii. Employer's Liability -- \$100,000
- iii. Commercial General Liability -- \$1,000,000 per occurrence. The City must be named as an additional insured on this policy.

Q. Ethics in Public Contracting

Contractor certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

R. Documents and Records

All materials provided to Contractor by the City remain the property of the City, including, but not limited to, the requested City owned fiber maps. All materials prepared by Contractor specifically in performance of this contract belong to the City.

Contractor will not provide any materials it has received from the City or prepared under this contract to a third party without advance written permission from the City.

Contractor will retain all records related to this contract for 5 years after final payment or until audited by the City, whichever comes first. The City may inspect these records upon reasonable notice to Contractor.

S. Indemnity

Contractor will save, defend, hold harmless, and indemnify the City, and all of its elected and appointed officials, officers, employees, agents, departments, agencies, boards, and commissions from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with Contractor's negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor in performance or nonperformance of its work under the contract. This indemnification survives the termination of the contract.

T. Default

The City is in default 1) if it fails to pay any amount due to Contractor; or 2) upon any other material failure to comply with the terms of the contract. Contractor is in default upon any material failure to comply with the terms of this contract.

A party alleging that the other party is in default must provide the allegedly defaulting party with written notice specifying the alleged default and allow 30 days for the default to be cured.

U. Remedies

If the City does not cure a default after receiving notice, Contractor may a) terminate this contract, and b) exercise all remedies available at law. If Contractor does not cure a default after receiving notice, the City may a) terminate the contract, and b) exercise all remedies available at law.

V. Dispute Resolution

Before taking legal action for any dispute under this contract, the parties will attempt to resolve the dispute through informal negotiation. If this negotiation fails, the parties will discuss whether to bring the dispute to non-binding mediation. If the parties do not agree to do so, or mediation fails to resolve the dispute, the parties may exercise legal remedies to resolve the dispute.

W. Subcontractors and Assignments

Contractor will not subcontract any portion of this contract without advance written permission from the City. The City is not obligated to grant this permission. If Contractor subcontracts under this contract:

Within seven days after receipt of payment by the City for work performed by a subcontractor, Contractor shall a) pay the subcontractor for the proportionate share of the total payment received from the City attributable to the subcontractor's work, or b) notify the City and the subcontractor, in writing, of Contractor's intention to withhold payment with the reason for withholding the payment. Contractor will pay interest of 1% per month to subcontractors on all amounts owed to the subcontractors which has not been paid or withheld under the terms of this paragraph.

Contractor must require individual subcontractors to provide their social security numbers, and proprietorship, partnership, and corporate subcontractors to provide their federal employee identification numbers. Contractor will provide this information to the City upon request.

Contractor must require subcontractors to include the terms of this section in all contracts with other subcontractors.

X. Drug-Free Workplace

Contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violating that prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iv) include the terms of this section in every subcontract or purchase order of over \$10,000, so that the terms will be binding upon each subcontractor and vendor.

Y. Notification

Any notices pertaining to this contract must be sent by first-class mail to:

To the City:

Fredericksburg City Manager

P.O. Box 7447

Fredericksburg, Virginia 22404-7447

To the Contractor:

The address listed on Contractor's Proposal or Bid. Contractor may change its address for notices by notifying the City in writing of the change.

Z. Severability

If a court declares any part of this contract to be invalid, void, or unenforceable, the rest of the contract remains in effect.

AA. Strict Performance

The failure of a party to insist upon the other party's strict performance of the terms of the contract is not a waiver of the right to insist upon strict performance of those terms at a later time.

Attachment B: Cost Proposal

No.	Category	One Time Cost	Annual Cost
1.0 Restoration (emergencies):			
1.1	• Per hour price that includes all materials (fiber, duct, hand holes, splicing material, etc.), labor, splicing, equipment, engineering, and permits. Complete restoration of services and right of way.		
2.0 New Build (expansion):			
2.1	• Inclusive of all materials excluding fiber (per foot price per single conduit and per foot for 2nd conduit)		
<i>Splicing (without construction – all materials included):</i>			
2.2	• Cable to cable splice (butt splice) (price per strand)		
2.3	• Termination splice (price per strand)		
2.4	• Mid-span splice (price per strand)		
2.5	• Fiber testing and troubleshooting (per hour)		
3.0 Construction:			
3.1	• Adding hand holes to existing system (price per unit)		
3.2	• Pulling fiber in existing pipe (per foot price)		
3.3	• Resetting hand holes (per unit price)		
3.4	• Install/Replace Marker Posts (per unit price includes marker)		
3.5	• Engineering and Permitting (per foot price)		

No.	Category	One Time or Per Unit Cost	Annual Cost
4.0 Egress:			
4.1	Price for transition from HPDE to exterior conduit, penetrating exterior, routing cable to demarcation point, mounting ONT, and grounding. (per hour price, contractor provides all materials)		
5.0	Locating cost per ticket (single price, payment every 30 days).		
6.0	Network inspection and maintenance cost per year (single price, payment every 30 days).		
7.0	Cost for emergency response resources (equipment, materials, and labor) standing by for emergencies (per incident).		

Attachment C:

Nondisclosure and Confidentiality Agreement

This NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2012, by and between the City of Fredericksburg, a Virginia municipal corporation (hereinafter "City"), and _____, (the "Business Associate").

RECITALS

- A. The Business Associate has been retained by the City to perform certain services on its behalf, specifically, _____.
- B. In connection with the Business Associate's provision of services it will have access to sensitive, confidential, important, and/or proprietary Confidential Information and Protected Health Information (as defined below).
- C. No portion of Business Associate's provision of services requires the capture, acquisition, use, or dissemination of any of the City's information.
- D. City wishes to provide for the confidentiality of the City's information.
- E. Business Associate agrees to these terms as a condition to receiving the contract to perform services for the City.

AGREEMENT

THEREFORE, in consideration of the foregoing, and in consideration of the award of the contract to perform the services referenced above, the Business Associate agrees as follows.

- 1. **Definitions.** For purposes of this Agreement,
 - a. "Confidential Information" will include:
 - i. Full Social Security Number (last 4 digits only are acceptable)
 - ii. Driver's License Number
 - iii. Financial account number or credit/debit card number
 - iv. Criminal history information
 - v. State ID card number
 - vi. Passport number
 - vii. Personally identifiable medical information
 - viii. Secret tax information as described in VA Code 58.1-3
 - b. "Business Associate" will include the Business Associate and all successors and assigns, affiliates, subsidiaries (as applicable), and related companies of the Business Associate.
 - c. "Representative" will include the Business Associate's managing members (as applicable), trustees, general partners (as applicable) and financial and legal

advisors. The term includes the officers, employees, agents, and contractors of the Business Associate and all persons who have access to Confidential Information by or through the Business Associate.

- d. "Protected Health Information" will have the same meaning as the term "protected health information" in 45C.F.R. §164.501, limited to the information created or received by the Business Associate from or on behalf of the City.
2. **Confidentiality.** At all times, both during and after the termination of its relationship with the City for any reason, the Business Associate and its Representatives will not obtain, retrieve, intercept, acquire, copy, download, use, disclose, or give others any of the Confidential Information in any manner whatsoever, and will hold and maintain the Confidential Information in strictest confidence. The Business Associate will ensure that all proper safeguards are in place to prevent the use or disclosure of the Confidential Information.
3. **Indemnity.** The Business Associate hereby agrees to indemnify the City against any and all losses, damages, claims, expenses, and attorneys' fees incurred or suffered by the City as a result of a breach of this Agreement by the Business Associate or its Representatives.
4. **Protection.** The Business Associate will be responsible for any breach of this Agreement by any of his/her/its Representatives and will, at his/her/its sole expense, take all necessary measures (including but not limited to court proceedings) to restrain his/her/its Representatives from prohibited disclosure or use of the Confidential Information.
5. **Irreparable Harm.** The Business Associate understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of the Agreement may cause the City irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that the City will have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the City will deem appropriate. Such right of the City is to be in addition to the remedies otherwise available to the City at law or in equity. The Business Associate expressly waives the defense that a remedy in damages will be adequate and any requirement in an action for specific performance or injunction for the posting of a bond by the City.
6. **Survival.** This agreement will continue in full force and effect even after the termination of the Business Associate and the City for any reason.
7. **Successors and Assigns.** This agreement and each party's obligations hereunder will be binding on the representatives, assigns, and successors of such party and will inure to the benefit of the assigns and successors of such party; provided, however, that the rights and obligations of the Business Associate hereunder are not assignable.
8. **No Waiver of Rights, Powers and Remedies.** No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, will operate as a waiver of any such right, power or

remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, will preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto will not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement will entitle the party receiving such notice or demand to any other notice or demand in similar or other circumstances or constitute a waiver of the rights of the party giving notice or demand. The terms and provisions of this Agreement may be waived, or consent for the departure there from granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent will be deemed to be or will constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver or consent.

9. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia.
10. **Attorneys' Fees.** If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party in such action will be entitled to reimbursement for reasonable attorney's fees and costs.
11. **Counterparts.** This Agreement may be signed in counterparts, which together will constitute one agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives or officers, effective as of the date first listed above in the preamble to this Agreement.

Business Associate:

Signature

By: _____

Date: _____

Title: _____